

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMY LEE VERNON, JR.,

No. 2:23-cv-01829 DJC AC PS

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE  
COMPANY; KAITLYN CRAWFORD;  
BRENDA KOLOGY; JOHN ANDJANE  
DOES 1-5,

Defendants.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding in this matter pro se, and pre-trial proceedings are accordingly referred to the undersigned pursuant to Local Rule 302(c)(21). The operative first amended complaint is located at ECF No. 9. Defendants move to dismiss the case. ECF No. 18. Plaintiff opposed the motion. ECF No. 23. Defendants filed a reply that was improperly noticed as a motion. ECF No. 24. Plaintiff submitted a second opposition (ECF No. 25), which defendants objected to as an improper surreply (ECF No. 26). In the interest of fairness and judicial efficiency, the court has considered all the briefing. For the reasons explained below, the undersigned recommends that defendants' motion to dismiss be GRANTED, but that plaintiff be given leave to amend in order to properly plead his claims under ERISA.

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## I. Background

## A. The Complaint

3 Jimmy Lee Vernon, Jr., proceeding in pro se, filed a complaint in diversity jurisdiction (28  
4 U.S.C. § 1332) on August 25, 2023. ECF Nos. 1, 9. Plaintiff asserts state law claims for breach  
5 of contract, breach of fiduciary duties, breach of implied obligation/covenant of good faith and  
6 fair dealing, breach of contractual duty to pay a covered claim, intentional misrepresentation,  
7 concealment, and negligence arising from defendants' alleged failure to pay life insurance  
8 benefits to him from his deceased father's policy. ECF No. 9 at 3-14. Plaintiff attaches to his  
9 complaint a letter from General Motors Benefits and Service Center, letters from Metropolitan  
10 Life Insurance Company ("MetLife"), and letter from United Auto Workers. ECF No. 9 at 15-28.

## B. Motions to Dismiss

12 Defendants moved to dismiss on February 2, 2024, arguing that the complaint fails to state  
13 a claim upon which relief can be granted because all the state law claims alleged are preempted  
14 by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. (“ERISA”).  
15 ECF No. 18 at 2.

## II. Analysis

#### A. Legal Standards Governing Motions to Dismiss

18        “The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal  
19        sufficiency of the complaint.” N. Star Int’l v. Ariz. Corp. Comm’n, 720 F.2d 578, 581 (9th Cir.  
20        1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of  
21        sufficient facts alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep’t., 901  
22        F.2d 696, 699 (9th Cir. 1990).

23 In order to survive dismissal for failure to state a claim, a complaint must contain more  
24 than a “formulaic recitation of the elements of a cause of action;” it must contain factual  
25 allegations sufficient to “raise a right to relief above the speculative level.” Bell Atlantic Corp. v.  
26 Twombly, 550 U.S. 544, 555 (2007). It is insufficient for the pleading to contain a statement of  
27 facts that “merely creates a suspicion” that the pleader might have a legally cognizable right of  
28 action. *Id.* (quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-35

1 (3d ed. 2004)). Rather, the complaint “must contain sufficient factual matter, accepted as true, to  
2 ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)  
3 (quoting Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads  
4 factual content that allows the court to draw the reasonable inference that the defendant is liable  
5 for the misconduct alleged.” Id.

6 In reviewing a complaint under this standard, the court “must accept as true all of the  
7 factual allegations contained in the complaint,” construe those allegations in the light most  
8 favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. See Erickson v. Pardus,  
9 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954,  
10 960 (9th Cir. 2010), cert. denied, 131 S. Ct. 3055 (2011); Hebbe v. Pliler, 627 F.3d 338, 340 (9th  
11 Cir. 2010). However, the court need not accept as true legal conclusions cast in the form of  
12 factual allegations, or allegations that contradict matters properly subject to judicial notice. See  
13 Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Sprewell v. Golden State  
14 Warriors, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001).

15 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.  
16 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may  
17 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support  
18 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir.  
19 2014). The court’s liberal interpretation of a pro se complaint, however, may not supply essential  
20 elements of the claim that were not pled. Ivey v. Bd. of Regents of Univ. of Alaska, 673 F.2d  
21 266, 268 (9th Cir. 1982); see also Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992). A pro se  
22 litigant is entitled to notice of the deficiencies in the complaint and an opportunity to amend,  
23 unless the complaint’s deficiencies could not be cured by amendment. See Noll v. Carlson, 809  
24 F.2d 1446, 1448 (9th Cir. 1987).

25 B. Judicial Notice

26 In general, district courts may not consider materials beyond the pleadings when assessing  
27 the sufficiency of a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Lee  
28 v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001). “There are two exceptions to this rule:

1 the incorporation-by-reference doctrine, and judicial notice under Federal Rule of Evidence 201.  
2 Both of these procedures permit district courts to consider materials outside a complaint, but each  
3 does so for different reasons and in different ways.” Khoja v. Orexigen Therapeutics, Inc., 899  
4 F.3d 988, 998. Incorporation by reference is a judicially created doctrine designed to allow courts  
5 to treat certain documents referenced within a complaint as though they are fully included in the  
6 complaint in order to prevent “plaintiffs from selecting only portions of documents that support  
7 their claims, while omitting portions of those very documents that weaken — or doom — their  
8 claims.” Khoja, 899 F.3d at 1002. It is proper to incorporate a document into a complaint when  
9 the claims – not just the defenses – necessarily depend on it. Id.

10 Here, the complaint entirely depends on the content of the insurance policy at issue.  
11 Plaintiff’s complaint refers to his father’s insurance policy numerous times, and documents are  
12 attached that reference the name of the insured, the plan name and group number, along with the  
13 claim number. See, e.g. ECF No. 9 at 15-25. The court accordingly takes judicial notice of the  
14 Certificate of Insurance (“Certificate”) for Group Policy No. 33600-G issued by MetLife to  
15 General Motors Corporation, which funds the life insurance benefits of the GM Life and  
16 Disability Benefits Program (the “Plan”), located at ECF No. 18-2, and the Summary Plan  
17 Description (“SPD”) for the Plan, located at ECF No. 18-3.

18 C. ERISA Preemption

19 Congress enacted ERISA in order to create “a comprehensive statute for the regulation of  
20 employee benefit plans.” Aetna Health Inc. v. Davila, 542 U.S. 200, 208, (2004). “ERISA  
21 contains one of the broadest preemption clauses ever enacted by Congress.” Joanou v. Coca-  
22 Cola Co., 26 F.3d 96, 99 (9th Cir. 1994) (internal quotation marks omitted). “Under § 514(a),  
23 ERISA broadly ‘preempts any and all State laws insofar as they may now or hereafter relate to  
24 any [covered] employee benefit plan . . .’ ” Fossen v. Blue Cross & Blue Shield of Mont., Inc.,  
25 660 F.3d 1102, 1108 (9th Cir. 2011) (alterations in original) (quoting 29 U.S.C. § 1144(a)).  
26 “Therefore, any state-law cause of action that duplicates, supplements, or supplants the ERISA  
27 civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy  
28 exclusive and is therefore pre-empted.” Id. at 209. Specifically, ERISA’s preemption clause

1 provides:

2                   Except as provided in subsection (b) of this section, the provisions of  
3                   this subchapter and subchapter III shall supersede any and all State  
4                   laws insofar as they may now or hereafter relate to any employee  
                  benefit plan . . .

5                   29 U.S.C. § 1144(a). Thus, Congress has made clear that where an employee welfare benefit plan  
6                   is concerned, ERISA governs and preempts any state law claims that relate to any such plan. Five  
7                   criteria determine whether a plan is governed by ERISA: (1) a “plan, fund, or program,” (2)  
8                   “established or maintained” (3) by “an employer,” (4) for the purpose of providing “benefits” (5)  
9                   to its “employees.” See 29 U.S.C. § 1002(2)(A).

10                  As a preliminary matter, ERISA applies to the Plan at issue, despite plaintiff’s argument  
11                  to the contrary. Plaintiff argues that the Plan is not covered by ERISA, disputing the applicability  
12                  of prongs 3, 4, and 5. He contends that defendants’ motion is improper because he has not  
13                  actually seen the records of the policy before July 2020 and after, in attempts to cover up fraud  
14                  related to a possible beneficiary change. ECF No. 23 at 2. However, it is clear from both the  
15                  documents attached to plaintiff’s complaint and the Plan itself, that the Plan is covered by ERISA.  
16                  Regarding criterion 3, the Plan documents show that the Plan was issued by General Motors,  
17                  which is an employer as defined by ERISA as General Motors “act[ed] directly as an employer . . .  
18                  in relation to an employee benefit plan,” (29 U.S.C. § 1002(5)) by purchasing the group insurance  
19                  from MetLife to provide life insurance benefits to its eligible employees and acting as the Plan  
20                  Administrator. ECF 18-2 at pp. 2, 18, 20-25, 99-100. Criterion 4 is satisfied because life  
21                  insurance benefits are expressly governed by ERISA. 29 U.S.C. § 1002(1) (“benefits in the event  
22                  of . . . death . . .”). Plaintiff provides no valid argument to the contrary as to criteria 3 and 4. ECF  
23                  23 at p. 4.

24                  As to criterion 5, the Plan benefits were provided to employees of General Motors, and  
25                  plaintiff makes no showing to the contrary. The documents attached to the complaint clearly  
26                  indicate that plaintiff’s father, the decedent and holder of the policy, was a retired employee of  
27                  General Motors and that as a benefit of his employment he was a covered participant of the Plan.  
28                  See ECF No. 9 at 18-21 (referencing decedent as a plan participant in the General Motors Group

1 Plan for Basic Life Insurance, 22-25 (referencing the Vernon's appeals to the UAW General  
2 Motor Department – Benefit Plans and the benefits payable “as a result of the death of General  
3 Motors hourly retiree Jimmy Lee Vernon.”). The Plan itself also states that eligible employees  
4 and retirees of General Motors, such as Decedent, are entitled to receive benefits. ECF No. 18-2  
5 at 86-87.

6 Defendants rely on Tinsley v. Gen. Motors Corp., 227 F.3d 700 (6th Cir. 2000), which is,  
7 in many ways, analogous to plaintiff's case. In Tinsley, a decedent (Williams) had initially  
8 designated his niece (Tinsley) as the beneficiary of his life insurance plan, but days before his  
9 death changed the beneficiary to his neighbor (Calloway). Id. Both Calloway and Tinsley  
10 attempted to claim benefits from the plan, and Tinsley ultimately filed suit against the insurer,  
11 arguing that the change was the result of undue influence in violation of state law, and that the  
12 decedent's signature may have been forged. Id. At 703. The Tinsley court, relying on Supreme  
13 Court and Sixth Circuit precedent, held that “claims touching on the designation of a beneficiary  
14 of an ERISA-governed plan fall under ERISA's broad preemptive reach and are consequently  
15 governed by federal law.” Tinsley, 227 F.3d at 704. The court concluded that “the question [of]  
16 whether Tinsley is entitled to the proceeds from Williams's life insurance plan due to the alleged  
17 forgery of Williams's signature on the beneficiary designation change form or the alleged  
18 exercise of undue influence by Calloway is preempted by ERISA and governed by federal law.”  
19 Id. at 704. The court went on to evaluate plaintiff's claims under federal law. Id. At 704-706.

20 The Ninth Circuit and district courts within this circuit have consistently held that ERISA  
21 preempts state law claims such as those asserted in the complaint. See, e.g., Johnson v. Lucent  
22 Technologies Inc., 669 Fed. Appx 406, 408 (9th Cir. 2016) (memorandum opinion; claim for  
23 intentional infliction of emotional distress preempted); McBride v. PLM Int'l, Inc., 179 F.3d 737,  
24 744-45 (9th Cir. 1999) (claim for breach of the implied covenant of good faith and fair dealing  
25 preempted); Kanne v. Connecticut Gen. Life Ins. Co., 867 F.2d 489, 493 (9th Cir. 1988) (claims  
26 under California statute prohibiting unfair business practices preempted); Greaney v. Western  
27 Farm Bureau Life Ins., 973 F.2d 812, 819 (9th Cir. 1992) (intentional interference with contract  
28 claim preempted) (citing Tingey v. Pixley-Richards W., Inc., 953 F.2d 1124, 1131 (9th Cir.

1 1992); Josef K. v. California Physicians' Service, 2019 WL 688075, at \*3, 2019 U.S. Dist.  
2 LEXIS 26284 (N.D. Cal. Feb. 19, 2019) (tortious interference claim preempted); Powell v. Unum  
3 Life Ins. Co. of Am., 2016 WL 8731383, at \*3, 2016 U.S. Dist. LEXIS 136311 (E.D. Cal. Sept.  
4 30, 2016) (causes of action for breach of contract, breach of the covenant of good faith and fair  
5 dealing and breach of fiduciary duty preempted); Finn v. United Healthcare Ins. Co., 2013 WL  
6 1164343, at \*2, 2013 U.S. Dist. LEXIS 39094 (S.D. Cal. March 20, 2013) (negligent  
7 misrepresentation claim preempted). Further, because ERISA provides the exclusive remedial  
8 scheme for any claims that relate to a plan, it also preempts any claims for extracontractual  
9 damages. See Bast v. Prudential Ins. Co. of America, 150 F.3d 1003, 1009 (9th Cir. 1998), as  
10 amended (Aug. 3, 1998) (“[e]xtracontractual, compensatory and punitive damages are not  
11 available under ERISA”). The court agrees that plaintiff’s first amended complaint, which  
12 contains only state law claims that are preempted by ERISA, must be dismissed.

13       B. Leave to Amend

14       A pro se plaintiff is generally entitled to an opportunity to correct defects in a complaint  
15 by amendment, unless the defects cannot be cured. Noll, 809 F.2d at 1448. The motion to  
16 dismiss is based only on ERISA preemption; under such circumstances, allowing plaintiff to file  
17 an amended complaint alleging ERISA claims would not be futile. Powell, 2016 WL 8731383, at  
18 \*3. The court should give plaintiff leave to amend to correctly plead his claims under ERISA.  
19 See Winn v. Lassen Canyon Nursery Inc., 2010 WL 4688798, at \*2, 2010 U.S. Dist. LEXIS  
20 125016 (E.D. Cal. Nov. 10, 2010)

21                   **III. Pro Se Plaintiff’s Summary**

22       It is being recommended that your complaint be dismissed because your state claims are  
23 preempted by ERISA. However, it is also being recommended that you be given leave to amend  
24 your complaint to assert claims under ERISA. If the recommendations are adopted, you will have  
25 30 days to file an amended complaint bringing federal claims under ERISA.

26                   **IV. Conclusion**

27       For the reasons explained above, the undersigned recommends as follows:

28       1. That the motion to dismiss at ECF No. 18 be GRANTED and the motion at ECF No. 24

1                   be VACATED and construed as a reply brief;  
2                   2. That the first amended complaint (ECF No. 9) be DISMISSED; and  
3                   3. That plaintiff be given 30 days to file an amended complaint bringing claims under  
4                   ERISA.

5                   These findings and recommendations are submitted to the United States District Judge  
6                   assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
7                   after being served with these findings and recommendations, any party may file written  
8                   objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a  
9                   document should be captioned “Objections to Magistrate Judge’s Findings and  
10                   Recommendations.” Failure to file objections within the specified time may waive the right to  
11                   appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez  
12                   v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

13                   DATED: April 26, 2024

14                     
15                   ALLISON CLAIRE  
16                   UNITED STATES MAGISTRATE JUDGE

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